

Message Text

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ORIGIN L-03

INFO OCT-01 IO-13 ADP-00 EB-11 COME-00 EPA-04 CEQ-02 SCI-06

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DRAFTED BY L/OA:HDCAMITTA

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APPROVED BY L/OA - HDCAMITTA

L/EUR - MR. RUSSELL (SUBS)

EUR - MR. SMITH (INFO)

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TO USMISSION GENEVA PRIORITY

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E.O. 11652: N/A/

TAGS: PBOR, SENV, ENRG, US, CAN

SUBJECT: LOS - EASTPORT REFINERY

FOR LEITZELL ON US SEABED DELEGATION

1. MEETING WAS HELD IN DEPARTMENT WITH PITTSSTON COMPANY LAWYERS. TOMORROW JUDGE WILL BE HEARING MANDAMUS REQUEST THAT MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION (MDEP) CONTINUE CONSIDERATION OF COMPANY APPLICATION TO BUILD REFINERY IN EASTPORT. MDEP HAS ARGUED THAT APPLICATION IS MOOT BECAUSE OF CANADIAN "PROHIBITION" CONTAINED IN NOTE. TO HELP US BUSINESS AND IN VIEW OF MDEP LETTER TO DEPARTMENT, WE BELIEVE A RESPONSE TO MDEP QUESTIONS WARRANTED.

2. QUESTION ONE OF MDEP READS: "UNDER INTERNATIONAL LAW AND EXISTING TREATY OBLIGATIONS, MAY CANADA PROHIBIT THE PASSAGE OF SUPERTANKERS OR VERY LARGE CRUDE CARRIERS THROUGH HEAD HARBOR PASSAGE, NEW BRUNSWICK, CANADA EN ROUTE TO

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EASTPORT, MAINE?" OUR PROPOSED RESPONSE WOULD BE: "UNDER

INTERNATIONAL LAW, CANADA MAY NOT ARBITRARILY PROHIBIT THE PASSAGE OF VERY LARGE CRUDE CARRIERS THROUGH HEAD HARBOR PASSAGE TO EASTPORT, MAINE."

3. PITSTON LAWYERS BELIEVE THE PROPOSED ANSWER IS ADEQUATE FOR PRESENT PURPOSES. IT PROTECTS US OPTIONS OF CLAIMING

PASSAGE RIGHTS UNDER 1817 DECLARATION OF COMMISSIONERS OR STATUS OF WATERS AS INTERNATIONAL STRAIT, OR BOTH. IT DOES NOT RAISE ISSUE OF STATUS OF CANADIAN WATERS OR CANADIAN POLLUTION PROTECTION RIGHTS VERSUS PASSAGE RIGHTS. AS A RESULT, IT SHOULD NOT ENCOURAGE CANADIANS TO JOIN ISSUE. WE ALSO DO NOT BELIEVE THE PROPOSED RESPONSE RAISES PARTICULAR DIFFICULTIES FOR LOS NEGOTIATIONS.

4. WOULD APPRECAITE YOUR COMMENTS ON PROPOSED ANSWER BY OOB, JULY 3, BY TELEPHONE. RUSH

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